

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CONAGRA FOODS, INC.

and

Cases 9-CA-089532
9-CA-090873

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 75

Jamie Ireland and Zuzana Murarova, Esqs.
for the General Counsel.

Ruth Horvatic and Jennifer Dehloff, Esqs.
(McGrath North Mullin & Kratz, P.C.)
Omaha, Nebraska, for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Dayton, Ohio on March 25 and 26, 2013. UFCW Local 75 filed the initial charges on September 18, and October 5, 2012. The General Counsel issued a consolidated complaint on January 15, 2013.

The General Counsel alleges that Respondent, Conagra, by its consultant and agent, Phillip Craft, violated Section 8(a)(1) in a series of presentations he made to employees on August 21 and 22, 2012. The General Counsel alleges more specifically that Craft told the employees that they could not talk about the Union while on company time or on the production floor.

The General Counsel also alleges that Respondent violated Section 8(a)(3) and (1) in issuing a verbal warning to employee Janette Haines on about October 2, 2012. Respondent issued Haines a verbal warning on that date for soliciting on behalf of the Union.

On the entire record,¹ including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

¹ Tr. 102, line 23 should read, “antithetical.”

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation with a facility in Troy, Ohio where it produces Slim Jims, pizza, breadsticks and similar products. In 2012 it sold and shipped goods valued in excess of \$50,000 directly to places outside of Ohio. Conagra admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Complaint paragraph 5: the meetings conducted at Respondent's facility by Phillip Craft

The Union, UFCW Local 75, began an organizing drive at Respondent's Troy, Ohio facility in about August 2011. As of the date of this hearing, the Union had not filed a representation petition.

At some point, Respondent hired the firm of Craft and Barresi to prepare a presentation for its employees about unions. Employees of the consulting firm gathered information from employees at the plant in preparation for these presentations. Phillip Craft, a principal of the firm, conducted 14 meetings with different groups of employees on August 21 and 22, 2012. He conducted 6 meetings in Building 2 of the plant on August 21 and 8 more in Building 1 of the plant on August 22.²

Craft made his presentations from a slide show or Power Point demonstration. He generally read from the slides, although at times he talked extemporaneously or responded to questions from the audience.

One slide from which Craft read at every meeting concerned Conagra's "No Solicitation No Distribution Policy." This slide presented the following "bullet points:"

No distribution rule (strictly enforced)

Prohibit in work areas at all times

Prohibit in all areas during working time

Prohibit all non-employees from distributing

No solicitation rule (strictly enforced)

Prohibit solicitation during working time

Prohibit solicitation in a work area on employee's own time

Prohibit all non-employees from soliciting

² The parties stipulated to the introduction of G.C. Exh. 9 without any discussion or testimony. In the absence of any evidence to the contrary, I find that the meetings took place at the times set forth in that exhibit.

It is undisputed that Respondent allows employees to talk about non work-related subjects while working in working areas.³ What is disputed in this matter is whether Craft said at several meetings, when speaking extemporaneously, that employees could not discuss the Union or unions during work time in work areas. However, it is also undisputed that after
 5 Craft's presentations, several or many employees discussed the Union on the production floor while working and that nobody was disciplined for doing so with the possible exception of Jan Haines on October 2, 2012.

10 Scott Adkins, Respondent's plant manager, and Thomas Thompsen, Respondent's human resources manager, attended all 14 of Craft's presentations. They, as well as Craft, himself, testified that he never told employees they could not discuss the Union while working and in fact, in response to questions, said just the opposite. Respondent also presented the testimony of Jesse French, a rank and file employee, and leadperson Ryan Fields, concerning the 10:00 p.m. meeting on August 22, to rebut the testimony of the General Counsel's witnesses regarding
 15 Craft's presentation. Douglas Hearn and Jane Gambill were called by Respondent to testify about the 0700 meeting which they attended. James Warner, a leadman, testified for Respondent regarding the midnight August 22/23 meeting. Jacqueline Seipel, a rank and file employee, testified for Respondent concerning the meeting which she attended, although it is not clear from the record which session that was.

20 There are no recordings or notes of anything Craft said other than the slides. Therefore, it is necessary to closely examine the testimony of the General Counsel's witnesses in order to determine whether there is any greater reason to credit their testimony than that of Respondent's witnesses. Another way of putting this would be whether the General Counsel established by a
 25 preponderance of the evidence that Craft said the things alleged in the complaint.

Testimony regarding the 1:00 p.m. meeting on August 21:

30 Rhonda Dross: Dross testified that Craft had a slide show and then, "he talked about soliciting, we wasn't allowed soliciting. Talked—said we was not allowed talking about the Union on our breaks until—unless we was on our breaks and lunches, or outside of work," Tr. 92. On cross-examination, Dross testified that Craft said that no soliciting was allowed during our working hours, but also that he said, "no talking about the Union," Tr. 97.

35 Paul Jackson: Jackson testified that he was almost 100% sure that Craft said that you cannot talk about the Union on company time. I do not credit Jackson's testimony because he clearly had only a sketchy memory of what was said at the meeting, and his testimony is obviously inaccurate in some respects, see Tr. 114, 119-20, 125, 133.

40 Julie Strader: Strader testified that Craft stated the employees were not allowed to talk about the Union on the production floor, Tr. 146.

³ A long line of Board cases holds that an employer violates the Act when employees are forbidden to discuss unionization, but are free to discuss other subjects unrelated to work, e.g., *Jensen Enterprises*, 339 NLRB 877, 878 (2003).

After the meeting, Strader saw Jan Haines, one of the most outspoken union supporters, in the ladies room. Strader told Haines that Craft had stated that employees could not talk about the Union on the production floor.

5 Testimony regarding the meeting at 5:00 a.m. on August 22:

 The General Counsel presented only one witness to testify about the 5:00 meeting on August 22. Cynthia Bowling came to 5:00 meeting prepared to take notes. She testified that Craft stated that employees are not allowed to talk about the Union in a work area. Tr. 16.
10 Bowling testified that she challenged Craft on this statement and that he responded by stating this rule was in Respondent's employee handbook. She testified that she asked him to show the rule to her in the handbook. At some point, according to Bowling, Craft said his slide came right out of the handbook. Bowling's testimony in this respect is unreliable because it certain that Respondent did not have a rule against union talk on the production floor in its handbook and
15 Craft's slides had no such statement on them.

 After the meeting Bowling approached plant manager Scott Adkins and asked him to sign her notes. He declined but accompanied Bowling to talk to Craft. Craft denied he told employees that they were not allowed to talk about the Union on work time and affirmatively
20 stated the opposite, Tr. 20.⁴

 Testimony regarding the 7:00 a.m. meeting on August 22:

 Employees Bill Stevens, Crystal Lindamood and former employee Robert Adams
25 testified that Craft stated that employees could not talk about the Union, Tr. 37, 58, 73. Lindamood gave an affidavit to the Board Agent stating that Craft told employees that Respondent's handbook prohibited employees from talking about the Union on the production line. At trial, she recanted this testimony, Tr. 78-79. The fact that both Lindamood and Cynthia
30 Bowling either testified or gave affidavits that Craft cited the employee handbook as authority for prohibiting union talk on the production line undercuts the reliability of both witnesses' testimony. Since the handbook contains no such statement, it is highly unlikely that Craft said that it did so.

35 Testimony regarding the 10:00 p.m. meeting on August 22:

 Jan Haines, an early and prominent union supporter, went to the 10:00 p.m. meeting on August 22, after discussing with other employees, including Julie Strader, what Craft had said at earlier meetings. She testified that:

40 And I remember him reading from the slides, and he got to a point where –and I—I feel like he read this from the slide, but he said for sure you cannot talk about the Union during – work time, on the—floor, on the production floor. I don't know his exact words, but he definitely said you couldn't discuss it while working.

⁴ Atkins confirmed that Bowling approached him after the meeting with a request to sign her notes. He did not testify regarding her subsequent conversation with Craft. Craft did not discuss any interaction with an employee that corresponds with Bowling's testimony.

Tr. 266.

Haines then took issue with Craft and they engaged in an argument in front of the entire audience. Craft denied that he said that employees could not talk about the Union during work time, Tr. 267. After a while both Craft and another employee expressed anger at Haines. The reliability of Haines' testimony is undercut by her testimony that Craft was reading from a slide when he told employees that they could not discuss the Union on work time, Tr. 281. Craft had no such slide.

The testimony of Jerry Hoschower, who attended the same meeting, is completely unreliable as he testified that he did not specifically recall what Craft stated about talking about the Union, Tr. 49-50. He did not recall Craft's name and generally seemed not to remember much that transpired during Craft's presentation.

Victoria Harris testified that she was embarrassed by Haines' conduct at the meeting. However, she also testified that Craft stated that you can talk about the Union but not during production, Tr. 163-64. However, Ms. Harris conceded that she was not paying close attention to what was going on at the meeting due her lack of interest, Tr. 173, 177. Thus, I conclude her testimony has little value.

John Adkins, who also attended the 10:00 p.m. meeting on August 22, testified that Craft told employees that they were not allowed to discuss the Union on the production floor. He also testified that Craft denied saying this when challenged by Jan Haines, Tr. 184-85. In his affidavit to the Board agent, Adkins contradicted his trial testimony and also stated he was not paying attention until Haines spoke up. This leaves his testimony as to what transpired beforehand worthless, Tr. 192-93.

Don Burns, a witness called by the General Counsel, testified that he was not paying attention at the meeting until Jan Haines began arguing with Craft. He did not testify as to what Craft said before the argument.

Andrew Golden at first testified that Craft said employees could talk about the Union on their own time, not company time. On cross-examination, he was unsure as to whether Craft said this, Tr. 237-38. Golden recalled almost nothing else about the meeting and did not recall anybody asking questions. It is not clear to me that Golden had any accurate recollection about what transpired.

The General Counsel clearly did not meet his initial burden of establishing that Craft told employees that they could not talk about the Union on the production floor during work time at the August 22, 10:00 p.m. meeting.

Testimony about the August 22/23 midnight meeting:

The General Counsel called Pamela Cole, a security guard at Conagra, who is hostile to Jan Haines and therefore I assume, unsympathetic to the Union. Cole testified that Craft told employees that they could talk about the Union but that if you were bothering other people you were to leave them alone, Tr. 253. In an affidavit given to a Board agent, Cole stated that Craft

told employees that they were not to talk about the Union on the company floor. At trial, Cole denied that she heard Craft say that and testified that she did not read that part of her affidavit closely.

5 Testimony regarding unspecified meetings:

It is unclear which meeting Jacqueline Seipel, called by Respondent, attended. Seipel testified that Craft did not say that employees could not talk about the Union on working time.

10 It is the General Counsel's burden to prove by a preponderance of the evidence that Craft made the statements alleged in the complaint. He has failed to do so. The General Counsel has not given me any persuasive reason to credit his witnesses over that of Scott Adkins, Thomas Thompsen and Craft. Many of the witnesses appear to have little recollection of what actually what was said at the meetings and with regard to many, it is clear that their testimony is in part
15 inaccurate. For that reason, I dismiss complaint paragraph 5.

Complaint paragraph 6: the verbal warning issued to Janette Haines

20 As stated previously, Janette Haines, who worked the third shift (10:00 p.m. to 6:30 a.m.) in Respondent's sanitation department was one of the Union's earliest and most active supporters. She distributed union literature and solicited employees to sign union authorization cards. Haines, as stated before, openly challenged Phillip Craft in the presence of plant manager Scott Adkins and Human Resource Manager Thomas Thompsen on the night of August 22.

25 On October 2, 2012, Respondent issued Haines a verbal warning for alleging soliciting employees in a working area – apparently on or about September 24, 2012, G.C. Exh. 5. The General Counsel alleges that Respondent violated Section 8(a)(3) and (1) in doing so.

30 Sometime in September 2012, Haines began to encourage employees who had signed union authorization cards to sign new ones. One day she encountered Megan Courtaway and Andrea Shipper, who worked close to one another on the Slim Jim Packaging line, in the ladies room. Haines asked them if they would sign new authorization cards. Courtaway and Shipper indicated that they would do so.

35 A few days after that, Haines encountered Shipper in the ladies room again. She asked Shipper if she could put authorization cards in Shipper's locker for the two women and Courtaway's husband, who also worked for Respondent. Shipper agreed and gave Haines the number of her locker, which she shared with Courtaway.

40 As to the incident for which Haines was disciplined, I credit the testimony of Haines and Respondent's witnesses, Andrea Shipper, and specifically credit Shipper's testimony to the minimal extent that it conflicts with that of Respondent's witness Courtaway. Shipper and Courtaway were at their work station waiting for their production line to start running when Haines passed them and told Courtaway that she had put authorization cards in their locker.
45 Haines did not have authorization cards on her person and did not ask Courtaway and Shipper to sign authorization cards in a work area.

This conversation lasted a matter of seconds and did not interfere with production, Tr. 364, 355. Haines continued on to do her work duties. A lady named Amanda, who was the leadperson for Courtaway and Shipper's line, came by their work station shortly thereafter. Courtaway told Amana that Haines had put authorization cards in their locker and that Haines had just advised them of that fact.

Amanda reported this to their supervisor, a man named Ritchie, and sent Courtaway and Shipper, "upstairs" to talk to Ritchie. Ritchie told Courtaway and Shipper to get the cards and bring them to him. Shipper went to her locker, obtained the authorization cards and brought them to Ritchie. Then Ritchie had Courtaway and Shipper fill out a statement about what transpired. Neither Courtaway nor Shipper told anyone that Haines had asked them to sign an authorization card on the production floor, Tr. 350—54, 361.

On about October 2, 2012, in the early morning, Haines' supervisor, Bo Smith, told her to go to the office of Brad Holmes, a senior human resources generalist, who reports to Thomas Thompson. Haines and Smith attended a meeting with Holmes. Holmes told Haines that "two girls had complained that [she] had solicited them on the gable top," Tr. 277. Holmes told Haines that employees were saying that Haines was offering authorization cards on the production floor for them to sign, Tr. 336.

This, according to Shipper and Courtaway, was not true.. Holmes never spoke to Shipper and Courtaway. Their written statements are not in this record, thus there is no evidence as to what information was in them.

Haines told Holmes that "absolutely did not happen." Holmes then presented Haines with the warning which is signed by Holmes, Haines, Smith and David Stormer, the Production Manager, who entered the room at the end of the meeting.⁵

Human Resources Director Thomas Thompson testified that he made the decision to discipline Haines for solicitation, but it is unclear what his involvement was and when it took place. Thompson did not attend the October 2, 2012 meeting with Holmes and Haines at which the verbal warning was presented. He testified that "we " took a look at the statements written by Andrea Shipper and Megan Courtaway, Tr. 321. At Tr. 326 Thompson testified that he read these statements and talked to both employees. I do not credit this testimony.

First of all, neither Shipper nor Courtaway testified to being interviewed by anyone other than their immediate supervisor. Since Holmes, who reported to Thompson, only reviewed these employees' written statements and did not interview them, I find it highly unlikely that Thompson interviewed them.

⁵ The warning appears to have been drafted prior to Holmes' meeting with Haines. Thus, there is a strong indication that Respondent decided to discipline Haines before it heard her side of the story. Moreover, it declined to tell Haines which employees accused her of solicitation, making it virtually impossible for her to effectively respond to these accusations. This inadequate, inaccurate and biased investigation of Haines' conduct indicates discriminatory motivation, *Midnight Rose Hotel & Casino*, 343 NLRB 1003, 1005 (2004).

Based on the record as a whole, I conclude that Respondent had no evidence that Haines attempted to have employees sign authorization cards on the production floor. I also conclude that the verbal warning was discriminatorily motivated.

5 Management knew that Haines was a vocal and active supporter of the Union. I also
infer that Respondent bore substantial animus towards her as the result of her conduct at the
August 22 meeting. There is no explanation in this record as to why Megan Courtaway felt
compelled to report to her line lead that Haines had left authorization cards in Andrea Shipper's
locker. There is no explanation as to why the line lead immediately sent the two employees to
10 their supervisor to write out a statement. Given this and the fact that Respondent issued the
warning based on inaccurate information (which it apparently did not possess) that Haines was
asking employees to sign authorization cards while they were on the production floor, I conclude
that Respondent was looking for an excuse to retaliate against Haines for her union activity. I
further conclude that Respondent would not have issued Haines the verbal warning on October 2,
15 but for the animus towards her protected conduct on August 22.

Did Haines engage in unprotected solicitation?

20 A most curious aspect of this case is that Phillip Craft, the consultant hired by
Respondent to educate its employees about what they could or could not do, opined that conduct
similar to that of Haines does not constitute unprotected solicitation.

At Tr. 228, Respondent's counsel sought to clarify Craft's understanding of what
constitutes solicitation. The General Counsel objected on the grounds that the question exceeded
25 the scope of cross-examination. I overruled the objection. Craft stated that if an employee asks
another on working time if they can sign an authorization card, it does not constitute solicitation
unless the employee has the card in hand for the other employee to sign on the production line,
Tr. 229-231. Thus, if an employee tells another on the production line that he or she should get
an authorization card from the first employee after working hours in a non-work area, the
30 employee is not engaged in unprotected solicitation.

Craft's opinion is consistent with Board precedent, *Wal-Mart Stores*, 340 NLRB 637,
638-39 (2003).⁶ There the Board stated that "an integral part of the solicitation process is the
actual presentation of an authorization card to an employee for signature at the time. As defined,
35 solicitation activity prompts an immediate response from the individual or individuals being
solicited and therefore presents a greater potential for interference with employer productivity if
the individuals are supposed to be working. Solicitation is therefore subject to rules limiting it to
nonworking time and in the special circumstances of retail stores, to non-selling areas."

40 The United States Court of Appeals for the Eighth Circuit reversed the Board in part,
Wal-Mart Stores, Inc., v. NLRB, 400 F.3d 1093 (8th Cir. 2005). The Court of Appeals panel held

⁶ Also see *Lamar Industrial Plastics*, 281 NLRB 511, 513 (1986); *Waste Management of Arizona*,
345 NLRB 1339, 1349-50 (2005) in which the Board affirmed the decision of the administrative law
judge. Two Board members, however, stated they found it unnecessary to rely on his comments and case
citations regarding the distinction between union solicitation and other employee activity in support of
union organizing.

2-1 that Wal-Mart employee Shieldnight engaged in unprotected solicitation when he asked another employee, who was on duty, to come to a union meeting and told her that he would like her to sign an authorization card. I am bound by Board precedent even if the Wal-Mart case is indistinguishable from the instant matter. Judges must apply established Board precedent which the Supreme Court has not reversed. It is for the Board, not the judge, to determine whether that precedent should be varied, *Waco, Inc.*, 273 NLRB 746, 749 n. 14 (1984).

Furthermore, the instant case is distinguishable from the Wal-Mart case. The panel majority noted that the record in Wal-Mart was silent as to whether Shieldnight had an authorization card on his person. In this case, the record establishes that Haines did not have a card on her person and made it clear to fellow employees Courtaway and Shipper that the authorization cards were in Shippers locker, a non-work area, not on her person. Thus, Haines' statements to Courtaway and Shipper did not have a significant potential to disrupt the workplace.

Moreover, it is meaningless to say that employees can express their support or opposition to the Union on work time but cannot tell others how they may demonstrate that support or opposition (assuming they are allowed to discuss non-work matters at all). If it is protected activity to discuss the union or speak for or against the union, it would follow that an employee may tell other employees about meetings or rallies either in favor or against the Union. It also follows that they have a protected right to tell employees where they may obtain pro or anti-union buttons, or an authorization card or sign an anti-union petition on non-working time, if located in a non-work area.

The letter to employees posted by Respondent on April 30, 2012

At the close of the hearing the General Counsel moved to amend the complaint to allege that Respondent's Exhibit 4, a letter to employees from plant manager Scott Adkins, violates Section 8(a)(1), Tr. 426-28. This exhibit was introduced into evidence by Respondent through Scott Adkins, Tr. 291-92.

I granted the motion to amend, which I construe as a motion to conform the pleadings to the evidence. Respondent contends that it has been denied its due process rights by virtue of the amendment.⁷ In deciding whether to permit a motion to amend, the Board considers a variety of factors, including the identity of the party who first introduced evidence relating to the amendment, whether the issue was fully litigated and whether Respondent has demonstrated that the amendment was prejudicial, *Pincus Elevator & Electric Co.*, 308 NLRB 684 (1992).

I find that the amendment is not prejudicial and does not deny Respondent due process. The April 30 letter was introduced by Respondent through its plant manager and, as explained below, violates Section 8(a)(1) on its face. Given that fact that alleged Section 8(a)(1) violations are adjudicated pursuant to an objective test (whether employees could reasonably interpret the

⁷ Respondent has not raised a Section 10(b) defense. Even if it had done so, I conclude that the allegation has a sufficient nexus to the charge filed on September 18, 2012 (since July 2012 the employer has prohibited employees from engaging in union activity on company time), to satisfy the requirements of Section 10(b), *Payless Drug Stores*, 313 NLRB 1220 (1994).

letter as prohibiting protected conduct), no additional evidence could have bearing on the merits of the additional allegation, *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). Respondent's motive in posting the letter and its subjective effect on employees (i.e., whether they were in fact coerced, restrained, etc.) is irrelevant, *Miller Electric Pump & Plumbing*, 334 NLRB 824 (2001).

The letter was posted on April 30, 2012, in conjunction with Conagra's posting of a general notice regarding employee rights under the Act. The letter in pertinent part states:

We also wish to remind employees that discussions about unions are covered by our Company's Solicitation policy. That policy says that solicitation for or against unions or other organizations by employees must be limited to non-working times. Distribution of materials is not permitted during working time or in work areas at any time.

In equating "discussions about unions" with solicitation, the letter is overly broad and violates Section 8(a)(1). The letter not only does not distinguish between "solicitation" and "discussions about unions," it equates them. Thus the letter violates Section 8(a)(1) in that it is so broad that it can reasonably be construed as encompassing protected conduct, *Cintas Corp.*, 344 NLRB 943 (2005); *Bigg's Foods*, 347 NLRB 425 n. 4 (2006).

CONCLUSIONS OF LAW

1. Respondent violated Section 8(a)(3) and (1) by issuing Janette Haines a verbal warning on October 2, 2013 for solicitation.

2. Respondent's letter regarding the NLRA notice, which has been posted at the Troy, Ohio facility since April 30, 2013 violates Section 8(a)(1).

3. The General Counsel has not established that Respondent, by Phillip Craft, violated the Act on August 21 and 22, 2012 as alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Respondent shall be ordered to rescind the verbal warning issued to Janette Haines on October 2, 2012 and to revise the letter it posted on April 30, 2013 to clarify that talking about the union during work time on the production floor does not constitute solicitation that is unprotected by Section 7 of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁸

⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Conagra Foods, Inc., Troy, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Disciplining employees for engaging in protected activities, such as encouraging other employees to sign an authorization card during working time on the production floor so long as they do not attempt to have another employee sign an authorization card while on working time and/or on the production floor.

(b) Posting notices or letters which can reasonably be construed as prohibiting protected conduct, such as merely discussing the union while working.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the verbal warning issued to Janette Haines on October 2, 2012.

(b) Within 14 days from the date of the Board's Order, remove from its files any references to the unlawful verbal warning issued to Janette Haines, and within 3 days thereafter notify her in writing that this has been done and that the warning will not be used against her in any way.

(c) Revise and post the letter posted on April 30, 2013 so as to inform employees that Respondent does not consider discussing the union during work time to constitute solicitation within the meaning of its Solicitation Policy.

(d) Within 14 days after service by the Region, post at its Troy, Ohio facility copies of the attached notice marked "Appendix."⁹ Copies of the notice, on forms provided by the provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these

⁹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 2, 2012.

5 Dated, Washington, D.C., May 9, 2013.

10

Arthur J. Amchan
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT discharge, discipline or otherwise discriminate against any of you for supporting United Food and Commercial Workers Local Union 75, or any other union.

WE WILL NOT post letters or notices that can be reasonably construed to prohibit protected discussions about unions and/or union activity during work time in working areas by characterizing such discussions as solicitation.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the October 2, 2012 verbal warning issued to Janette Haines for soliciting during work time in a work area.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful verbal warning issued to Jan Haines on October 2, 2012, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that the warning will not be used against her in any way.

WE WILL revise the letter we posted on April 30, 2013 so that it cannot be reasonably construed as prohibiting mere discussion about the Union or unions on working time in work areas and thus make clear that mere discussion of the Union and/or unions does not constitute prohibited solicitation under our solicitation and distribution policy.

CONAGRA FOODS, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

550 Main Street, Federal Building, Room 3003, Cincinnati, OH 45202-3271

(513) 684-3686, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S

COMPLIANCE OFFICER, (513) 684-3750.